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ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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February 13, 2015

The Honorable Mathy Stanislaus
Assistant Administrator
Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Assistant Administrator Stanislaus:

Thank you for appearing before the Subcommittee on Environment and the Economy on Thursday, January 22, 2015, to testify at the hearing entitled "EPA's 2014 Final Rule: Disposal of Coal Combustion Residuals from Electric Utilities."

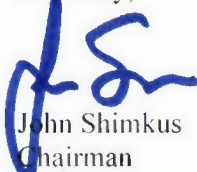
Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

Also attached are Member requests made during the hearing. The format of your responses to these requests should follow the same format as your responses to the additional questions for the record.

To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on Monday, March 2, 2015. Your responses should be mailed to Nick Abraham, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed in Word format to Nick.Abraham@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



John Shimkus
Chairman

Subcommittee on Environment and the Economy

cc: The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment and the Economy

Attachments

Additional Questions for the Record

The Honorable John Shimkus

1. According to the preamble of the final rule, EPA is “strongly encouraging” States to incorporate the requirements in the final rule by opening up their solid waste management plans.
 - a. How many States has EPA talked to about opening/revising their Solid Waste Management Plan to incorporate the final rule?
 - i. How many States have indicated willingness to revise their plans to incorporate the final rule?
 - ii. If States have indicated they are not willing to open and revise their solid waste management plans, please provide details regarding why they are unwilling to revise the plans.
 - b. Please explain, in detail, the process EPA plans to follow regarding opening and approving State Solid Waste Management Plans to include coal ash, including:
 - i. How long does EPA anticipate it will take to approve State plans?
 - ii. Please describe in detail the process that will be followed for approving the State plans
 - iii. Does EPA intend to delegate the authority to approve the revisions to the State plans the Regional offices?
 - c. Many States will need statutory or regulatory changes in order to open the solid waste management plans to incorporate the final rule. How does EPA anticipate that States will be able to incorporate the requirements in time to meet the six month effective date of the final rule?
2. The preamble to the final rule states that once “EPA has approved a solid waste management plan that incorporates or goes beyond the minimum federal requirements, EPA expects that facilities will operate in compliance with that plan and the underlying State regulations.” However, isn’t it true that because the State programs do not operate in lieu of the Federal requirements, that the Federal requirements remain independently enforceable through citizen suits?
 - a. Because State programs do not operate in lieu of the Federal rule, if the State requirements vary from the federal requirements, will regulated entities have to comply with both the State rules and the Federal requirements or risk being subject to a citizen suit?
3. The final rule requires that if a constituent of concern is detected above a statistically significant level, that the groundwater protection standard must be set at either the Maximum Contaminant Level or at the background concentration. Whereas, the proposed rule, like the municipal solid waste program, would have allowed the owner or operator to establish an alternative groundwater protection standard based on site-specific conditions.
 - a. Has EPA considered whether this will impact future and on-going corrective action at coal ash disposal units in States that utilize risk-based decision making?
 - b. What would be the impact of the final rule on risk-based decision making – in particular, the ability of States to set either an alternative point of compliance or alternate groundwater protection standards?

4. Please provide the specific legal authority and arguments that EPA believes support the regulation of inactive surface impoundments under Subtitle D.
5. Surface impoundments that are required to close under the final rule are allowed an extension and may continue to operate if there is no on or off-site disposal capacity *for the coal ash*. Please explain whether EPA also considered the need for alternative disposal capacity for wastewater and why or why not.
6. The owner or operator of an impoundment that must close under the final rule has the opportunity to grant itself an extension of the deadline if it can demonstrate that it does not have sufficient on or off-site disposal capacity.
 - a. How far off-site does the facility have to look for alternative disposal capacity?
 - b. Please explain in detail what EPA intends owners and operators to do with respect to demonstrating whether there is available off-site disposal capacity.
 - c. Has EPA assessed the risks of additional truck traffic on the road that will be required to move the coal ash to an off-site disposal facility?
7. In the final rule, EPA provides a new definition of what constitutes “beneficial use” which provides that a user of CCR must demonstrate that environmental releases are comparable to analogous products for an un-encapsulated use of CCR involving placement on the land of 12,400 tons or more in non-roadway applications. Please explain in detail the basis for using 12,400 tons as a threshold.
8. Does the 12,400 ton-threshold requirement for beneficial use apply to coal ash which is destined for an encapsulated use, for example in concrete. Specifically,
 - a. Does the 12,400 ton-threshold apply to piles of coal ash that are awaiting re-use?
 - b. Does the 12,400 ton-threshold apply on a facility-wide basis?

The Honorable Frank Pallone, Jr.

Under the Bevill Amendment, EPA has been required to consider specific factors in determining whether to regulate coal ash under Subtitle C of RCRA: (1) the source and volumes of material generated per year; (2) present disposal and utilization practices; (3) potential danger, if any, to human health and the environment from the disposal and reuse of such materials; (4) documented cases in which danger to human health or the environment from surface runoff or leachate has been proved; (5) alternatives to current disposal methods; (6) the costs of such alternatives; (7) the impact of those alternatives on the use of coal and other natural resources; and (8) the current and potential utilization of such materials.¹

1. EPA revisited these eight study factors in the coal ash final rule. Please describe the process EPA went through to gather this information and what EPA found.
2. What factors weighed most heavily on EPA’s decision?

The final rule identified technical uncertainties that cannot be resolved, including the extent to which risks are managed sufficiently under the final rule.

¹ 42 U.S.C. § 6982(n)

3. What information will EPA gather over the next several years to resolve these technical uncertainties?
4. How will the experience of states implementing the new final rule inform EPA's future analysis?

The final rule also identified the possibility that concentrations of hazardous contaminants in coal ash may rise in the near future.

5. Why might that happen? What actions might be necessary if that happens?

Attachment 2—Member Requests for the Record

During the hearing, Members asked you to provide additional information for the record, and you indicated that you would provide that information. For your convenience, descriptions of the requested information are provided below.

The Honorable Gregg Harper

1. If a State determines that there is no human receptor for the groundwater and that a cleanup standard above the MCL or background is appropriate, would that meet the minimum requirements of the rule?

The Honorable Bill Flores

1. When you proposed the application of location restrictions to existing surface impoundments, the EPA acknowledged that these location restrictions would force a majority of the current impoundments to close.
 - a. Do you have an estimate of how many will close?
 - b. Moving further upstream from those closures, what sort of reliability issues could be imposed on the electric grid?